

CV 15 - 1505

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Attorney for Defendants:
United National Specialty Insurance Company,
and United National Insurance Company

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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301 Development LLC

Action No.: _____

Plaintiff,

- against -

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§ 1446

United National Specialty Insurance Company
a/k/a United National Insurance Company,

Defendant.

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TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that defendants United National Insurance Company and United National Specialty Insurance Company ("Petitioners") hereby remove to this Court the New York State Court action described below under 28 U.S.C. § 1446.

1. JURISDICTION

On February 18, 2015, plaintiff 301 Development LLC filed in the Supreme Court of the State of New York in and for the County of Kings an action styled *301 Development LLC v. United National Specialty Insurance Company a/k/a United National Insurance Company*, No. 501863/2015 (the "*301 Development* action"). A true and correct copy of the Summons and

Complaint in the *301 Development* action is attached hereto as Exhibit A. The *301 Development* action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332(a), and is one that may be removed to this Court by Petitioners pursuant to the provisions of 28 U.S.C. §1446 in that, as explained within, it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

A. AMOUNT IN CONTROVERSY

The *301 Development* action alleges that Petitioners and defendants are required under United National Specialty Insurance Company Policy No. VB0956744 issued to 301 Development LLC, to pay 301 Development LLC at least \$789,414 in connection with a November 9, 2014 loss sustained at 287-299 McGuinness Boulevard in Brooklyn, New York 11222. The amount in controversy thus exceeds \$75,000.

B. DIVERSITY OF CITIZENSHIP OF PLAINTIFF AND PETITIONERS

On information and belief, plaintiff 301 Development LLC is a “citizen” of New York for purposes of determining diversity jurisdiction. 301 Development LLC is a New York domestic limited liability company. (Exhibit A, Complaint, Par. 1; Exhibit B, New York Department of State “Entity Information” printout on DOS ID # 3202582; Exhibit C, certified copy from the NYC Department of Finance Office of the City Register of the Assignment of Leases and Rents by assignor 301 Development LLC for 299 McGuinness Boulevard in Brooklyn, with Affidavits of Shimshon Mandel and Chaim Lefkowitz that 301 Development LLC is a New York limited liability company; Exhibit D, certified copy of the Affirmation of Confession of Judgment filed on June 11, 2014 in the Supreme Court of the State of New York in and for the County of Kings in an action styled *S. Construction, Inc. v. 301 Development LLC*, Index No. 505306/2014; Exhibit E, certified copy of the Affirmation of Confession of Judgment filed on July 7, 2014 in the Supreme Court of the State of New York in and for the County of

Kings another action also styled *S. Construction, Inc. v. 301 Development LLC*, Index No. 506158/2014.) 301 Development LLC has two members, Shimshon Mandel and Chaim Lefkowitz (Exhibit C, Affidavits of Shimshon Mandel and Chaim Lefkowitz therein stating that they are the sole members of 301 Development LLC; Exhibit D and Exhibit E).

On information and belief, both members of 301 Development LLC are citizens of New York. Shimshon Mandel is domiciled in New York. (Exhibit A, Summons in the *301 Development* action stating “Plaintiff’s address” as 1458 52nd Street, Brooklyn, New York 11219; Exhibit F, certified copy of the *Rimberg v. Shimshon Mandel, et al.* Complaint Index No.: 00517/2010 filed in the Supreme Court for the State of New York, for the County of Kings, Par. 2, stating that Shimshon Mandel is a resident of the State of New York with a primary address of 1458 52nd Street, Brooklyn, New York 11219; Exhibit G, certified copy of the Shimshon Mandel, et al.’s Verified Answer to *Rimberg v. Shimshon Mandel, et al.* Complaint Index No.: 00517/2010, Par. 2, admitting Par 2 of the Complaint.)

301 Development LLC’s other member, Chaim Lefkowitz, is on information and belief, also a citizen of New York. (Exhibit H, certified copy of the *Chaim Lefkowitz, et al. v. GMC Construction Corp., et al.* Complaint Index No.: 6596/2009 filed in the Supreme Court for the State of New York, for the County of Kings, Par 1, stating that Chaim Lefkowitz is a resident of Brooklyn, New York; Exhibit I, certified copy of the Verified Reply in the *Chaim Lefkowitz, et al. v. GMC Construction Corp., et al.* Complaint, seeking the same damages as are asserted in the Complaint; Exhibit J, certified copy of the Second Amended Complaint in the *Lerner, et al. v. Fleet Bank, N.A., et al.* consolidated action, filed on December 30, 2004 in the Eastern District of New York under 1:98-cv-07779-FB-ASC, Document 42-2, Par. 58, stating that plaintiff Chaim Lefkowitz is a citizen of New York; Exhibit K, certified copy of the *Rivka Stein v. World-Wide Plumbing Supply, Inc., et al.* First Amended Complaint filed on February 28, 2014 in the

Eastern District of New York under 1:13-cv-06795-BMC-JO, Document 27, Par. 7 stating that Chaim Lefkowitz is a citizen of New York; Exhibit L, Answer of Chaim Lefkowitz to the Amended Complaint in the *Rivka Stein v. World-Wide Plumbing Supply, Inc., et al.* Case 1:13-cv-06795-BMC-JO Document 60 filed on January 21, 2015, Par. 1, admitting Chaim Lefkowitz is a citizen of New York.)

In contrast, both defendants to the *301 Development* action are citizens of states other than New York. The insurance policy sued upon (Exhibit A, Complaint, Par. 4) was issued by United National Insurance Company, not United National Specialty Insurance Company. (Exhibit M, Wilkinson Affidavit and Exhibit A thereto.) While the insurers are affiliated entities, they are separate companies. (Exhibit N, printout from the National Association of Insurance Commissioners website at <https://eapps.naic.org/cis/companySearch.do>, showing United National Insurance Company with NAIC #: 13064, and United National Specialty Insurance Company with NAIC #: 41335.)

United National Insurance Company was at the time the *301 Development* action was filed, and still is, a Pennsylvania corporation with its principal place of business in Bala Cynwyd, Pennsylvania. (Exhibit M, Wilkinson Affidavit; Exhibit O, Commonwealth of Pennsylvania, Department of State certification that United National Insurance Company is a Pennsylvania corporation; Exhibit P, printout from the Excess Lines Association of New York website at <http://www.elany.org/es.aspx?m=elf>, listing United National Insurance Company as an eligible excess lines insurer in New York and listing its State of Domicile and Home Office in Pennsylvania.)

United National Specialty Insurance Company was at the time the *301 Development* action was filed, and still is, a Wisconsin insurance company having its principal place of business in Bala Cynwyd, Pennsylvania. (Exhibit M, Wilkinson Affidavit; Exhibit Q, printouts

from the New York State Department of Financial Services website at https://myportal.dfs.ny.gov/companydirectory/dir_srch_optiono.jsp stating the domicile of United National Specialty Insurance Company is Wisconsin, and its address is in Bala Cynwyd, Pennsylvania.)

As the attorney for United National, I personally located and printed the website pages referred to above on the dates stated in the Exhibits.

The parties to this action therefore present complete diversity of citizenship for purposes of invoking federal jurisdiction as the plaintiff and all its members are citizens of New York; while defendant United National Insurance Company is a citizen of Pennsylvania, and nominal defendant United National Specialty Insurance Company is a citizen of Wisconsin and Pennsylvania.

C. VENUE

Pursuant to 28 U.S.C. § 1446, this action is properly removed to the Eastern District of New York because the *301 Development* action was filed in Kings County, which is within the district of the Eastern District Court.

2. SERVICE OF COMPLAINT

On March 4, 2015, United National Specialty Insurance Company received a New York Department of Financial Services letter dated February 25, 2015 stating that it had acknowledged to plaintiff's counsel service of the Summons and Complaint of the *301 Development* action on February 23, 2015. (Exhibit A, last page.) This was the first time that defendants received a copy of the Summons and Complaint in the *301 Development* action. (Exhibit M, Wilkinson Affidavit).

At this time, the Supreme Court file in the *301 Development* action contains the Summons and Complaint. Defendants have not filed any documents in the Kings County action.

3. DEFENDANTS' UNANIMOUS CONSENT TO REMOVAL TO FEDERAL COURT

The real party in interest, United National Insurance Company, and the ostensible defendant, United National Specialty Insurance Company, seek to have the *301 Development* action removed to the Eastern District of New York and have the Federal Court decide the action. (Exhibit M, Wilkinson Affidavit).

WHEREFORE Petitioners United National Insurance Company and United National Specialty Insurance Company pray that this Court remove the *301 Development* action from the Supreme Court of the State of New York, County of Kings, in accordance with 28 U.S.C. §1446 and for any other relief the Court deems just and proper.

March 23, 2015

By: _____


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UNITED NATIONAL INSURANCE COMPANY AND
UNITED NATIONAL SPECIALTY INSURANCE
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